

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 13-O-10814-YDR
)	
DAVID JOSEPH ETEZADI,)	
)	DECISION AND ORDER OF INVOLUNTARY
Member No. 125552,)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent David Joseph Etezadi (respondent) is charged with two counts of misconduct. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

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¹ Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar that were in effect from January 1, 2011, through June 30, 2014. A number of the rules of procedure, including the rules governing defaults, were amended effective July 1, 2014. Nonetheless, because respondent's default was entered before July 1, 2014, the operative rules in this matter are those that were in effect before July 1, 2014.

² If the court determines that any due process requirements is not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice law in this state on December 11, 1986, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

The State Bar filed the NDC in this proceeding on November 7, 2013. On November 7, 2013, the State Bar also served the NDC on respondent at his membership-records address by certified mail, return receipt requested. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On November 14, 2014, the State Bar received the return receipt for the NDC. The return receipt appears to be signed by J. Vasquez.

Thereafter, the State Bar (1) attempted to reach respondent by telephone at his membership-records telephone number and left a voicemail message for respondent asking him to call the State Bar; (2) sent a courtesy copy of the NDC to respondent at a private email address that is on file with the State Bar;³ and (3) sent, by first-class mail, courtesy copies of the NDC to respondent at his membership-records address and at an alternate address that the State Bar found for respondent through an internet search. None of the three courtesy copies of the NDC was returned to the State Bar as undeliverable or otherwise.

Respondent failed to file a response to the NDC. On January 14, 2014, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt

³ As of February 1, 2010, all attorneys are required to maintain with the State Bar a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

requested, to his membership-records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar Deputy Trial Counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The State Bar received the return receipt for the motion for entry of default. That return receipt was signed by Jonathan Vasquez on January 15, 2014.

Respondent did not file a response to the motion, and his default was entered on February 4, 2014. The order entering the default was properly served on respondent at his membership-records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e),⁴ effective three days after service of the order. He has remained on inactive enrollment since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney had 180 days to file motion to set aside default].) On August 18, 2014, the State Bar filed and properly served a petition for disbarment after default on respondent by certified mail, return receipt requested, to his membership-records address. The State Bar reported in the petition that (1) respondent failed to contact the State Bar since his default was entered on February 4, 2014; (2) there is one non-public disciplinary matter pending against respondent; (3) respondent has one prior record of discipline;⁵ and (4) the Client Security Fund has not made any payments due to respondent's conduct.

Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on September 15, 2014.

⁴ All further statutory references are to the Business and Professions Code.

⁵ The court admits into evidence the certified copy of respondent's prior record of discipline in State Bar Court case number 04-O-14236, etc., which the State Bar attached to its petition for disbarment after default.

Pursuant to a stipulation that respondent entered into with the State Bar and a State Bar Court order filed February 15, 2006, in case number 04-O-14236, etc., respondent was publicly reprimanded. Discipline was imposed in that prior matter for respondent's failure to properly administer his client trust account. Respondent failed to promptly withdraw earned fees from the account, paid personal expenses from the account, and issued checks drawn on the account when there were not sufficient funds in the account to pay the checks.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations (but not the charges or conclusions) in the NDC were deemed admitted and no further proof was or is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged on one of the two counts and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 13-O-10814 (Kaufman Matter)

Count One – State Bar Rules of Professional Conduct, rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. In Count One, the State Bar charges that respondent willfully violated rule 3-110(A) solely because he failed “to file a Memorandum of Costs pursuant to judgment in favor of his client on or before November 13, 2012.” There is no allegation (i.e., no evidence) that respondent intentionally or recklessly failed to timely file the costs memorandum. Thus, respondent's failure to timely file a *single* costs memorandum does not establish an intentional, reckless, or repeated failure to perform legal services competently. At worst, respondent negligently failed to timely file the costs memorandum. The review department, however, has repeatedly held that negligence, “even that amounting to legal malpractice, does not establish a

rule 3-110(A) violation.” (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 149.) In short, no violation of rule 3-110(A) is shown.

Count One is DISMISSED with prejudice for want of proof.

Count Two – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to two State Bar investigation letters or to otherwise cooperate in the State Bar’s investigation of the Kaufman matter.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent’s disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar (a) filed and properly served the NDC on respondent at his membership records address by certified mail, return receipt requested; (b) attempted to reach respondent by calling his membership-records telephone number and leaving a voicemail message for him; (c) sent respondent a courtesy copy of the NDC at an email address he provided the State Bar; and (d) sent, by first class mail, courtesy copies of the NDC to respondent at his membership-records address and at an alternative address;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

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Despite reasonable notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent David Joseph Etezadi be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that David Joseph Etezadi, State Bar number 125552, be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: November 26, 2014.

YVETTE D. ROLAND
Judge of the State Bar Court